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COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Fifty-second session

SUMMARY RECORD OF THE 1263rd MEETING

Held at the Palais des Nations, Geneva,
on Friday, 13 March 1998, at 10 a.m.

Chairman: Mr. SHERIFIS

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The meeting was called to order at 10.10 a.m.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 7) (continued)

Initial and second periodic reports of Armenia (CERD/C/289/Add.2; HRI/CORE/1/Add.57) (continued)

1. At the invitation of the Chairman, the delegation of Armenia resumed its places at the Committee table.

2. Mr. SHAHI thanked the Republic of Armenia for having submitted to the Committee a particularly complete report on its implementation of the Convention. He welcomed Mr. Valencia Rodriguez's very detailed analysis which he hoped the Government would take into account, along with the Committee's concluding observations.

3. Referring to paragraph 37 of the report (CERD/C/281/Add.2), he drew the attention of the delegation to the fact that article 69 of the section of the Penal Code prohibiting "propaganda or agitation intended to incite to racial or national enmity or dissension" was inadequate to guarantee implementation of the Convention, since under that instrument States parties were called upon to prohibit the dissemination of racist ideas, whether or not such ideas had the effect of inciting racial discrimination.

4. With regard to the implementation of article 5, paragraph 83 of the report stated that "in the present circumstances, it is not considered advisable to introduce a special category of offences with a racial motivation requiring the introduction of harsher penalties than other similar infringements of the law". On the contrary, the Government should use the adoption of the new Penal Code to incorporate all the provisions of the Convention into domestic legislation, by indicating, for example, the penalties laid down for the dissemination of ideas leading to racial discrimination or theories affirming racial superiority. Contrary to the Government's interpretation (para. 81 (a)), the provisions of article 4 of the Convention were not aimed at restricting the right to freedom of opinion as such but at prohibiting the expression of racist opinions, a subtle distinction that could usefully be reflected in the new Penal Code.

5. Concerning the implementation of article 4, paragraph 81 also stated that "propaganda or agitation intended to incite to racial or national enmity or dissension ... shall be punishable by ... exile for a period of two to five years". He wished to know more about the places of exile, and particularly their location.

6. Mr. GARVALOV commended Armenia for having submitted a particularly substantive report, and on time. He noted with interest that the report as well as the representatives of Armenia had used three expressions, namely, "ethnic minorities", "ethnic groups", and "nationalities". As he knew that some countries considered a nationality to be a group of persons who were part of the nation, sometimes for generations, whereas others thought of them as groups coming from neighbouring countries, he wondered whether the distinction made was one of substance.

7. Article 7 of the Convention was intended not only to commit States parties to adopt effective measures to combat racial discrimination in the fields of teaching, education, culture and information, but also to combat prejudices which led to racial discrimination and to promote understanding, tolerance and friendship among nations and racial or ethnic groups. It would be useful for the Government to provide more comprehensive information in its next periodic report on that aspect of the specific implementation of article 7.

8. Mr. MELIK-SHAHNAZARIAN (Armenia), Head of the Department of International Organizations in the Ministry of Foreign Affairs, replying to the questions put to him regarding a letter from Azerbaijan, invited the members of the Committee to refer to the letter, distributed as an official document of the forty-ninth session of the Sub-Commission on Prevention of Discrimination and Protection of Minorities (E/CN.4/Sub.2/1997/47), in which the Republic of Armenia refuted the false information disseminated by the Government of Azerbaijan. It also contained replies to a number of the points raised by Mr. Valencia Rodriguez.

9. Referring to the allegations of ethnic cleansing directed against his country, he presented an extensive historical account of the conflictual relations between Armenia and Azerbaijan. Azerbaijan had unilaterally put an end to an attempted negotiated settlement of the territorial and other differences between the two countries and had seized 58 per cent of the territory of Upper Karabagh. It had driven the Armenians out by means of major military operations, including bombardments, with the help of the Soviet Union. Following the hostilities, 168,000 Azerbaijanis had left Armenia. Despite Armenia's efforts to reach a settlement of the question by civilized means, the entire Armenian population had been expelled without consideration or compensation from the areas under Azerbaijani control. The Azerbaijanis who had left Armenia, on the other hand, had done so voluntarily after receiving compensation and selling their real property.

10. The contradiction between the figures provided in paragraphs 11 and 18 of the report on the number of Azerbaijanis who had left Armenia and those who had been included in the 1989 census there was more apparent than real, since the figures were in fact complementary, and simply reflected the fact that the Azerbaijanis had left Armenia gradually over a two-year period.

11. The Azerbaijanis in Armenia were incomparably better treated than the Armenians living in Azerbaijan. The Armenian press did not single out the Azerbaijanis for criticism, whereas the Azerbaijani media systematically denigrated the Armenian minority in their country. They accused Armenia in particular of having seized their territory and incited the population to reconquer it by force. Similarly, books inciting hatred of Armenia were published in Azerbaijan. On the subject of Azerbaijani territorial claims, he noted that Armenia had existed for some 4,000 years, while Azerbaijan had been created only in 1918.

12. As for the violation of the fundamental rights of members of the Armenian opposition, he confirmed the information contained in paragraph 95 of the report that torture and other cruel or degrading treatment was still practised by investigators. That was because the Republic of Armenia was a

young State whose judicial system was relatively new, and it would need more time to change the attitudes and behaviour of certain law-enforcement officers.

13. The political power struggle had assumed some regrettable forms, which had alarmed the European Parliament. Some opposition leaders had been found guilty of offences under the ordinary law, such as the illegal possession of weapons. However, as part of the policy of appeasement, the President of the Republic had announced that those who had been released could stand as candidates in the forthcoming elections. The representatives of all political persuasions were also eligible. The Committee for the Defence of Political Prisoners had recently stated that there were no political prisoners in Armenian prisons. The political life of Armenia was thus entering a new era.

14. In reply to a question on the low number of foreigners in Armenia, he said the foreign population was composed largely of several hundred students and representatives of non-governmental organizations (NGOs), groups which tended not to settle permanently. If foreigners only rarely settled in Armenia, it was because the standard of living was too modest to make it attractive for them. That would probably change once the country attained the desired level of economic development. However, it was facing a growing influx of illegal immigrants from Africa and Arab countries who were trying to use it as a point of entry into Turkey and Europe.

15. With regard to the national communities, he drew attention to the information given in paragraphs 20 and 21 of the report, stressing that many minorities - Assyrians, Greeks, Kurds, Georgians, Jews, Germans, Poles and Russians, or about 4 per cent of the total population - had formed intercommunity associations and participated actively in social and cultural activities.

16. He confirmed what he had said on 12 March about the complete freedom enjoyed by those communities which were in complete harmony with the Government. He cited as an example the Kurds, several tens of thousands of whom lived in the former republics of the Soviet Union; they had created an international organization in Armenia, the Kurdish Union, which had juridical personality. Armenia was the only country in which the Kurds could speak, write and study in their own language up to the university level. If Armenia could not always meet the needs of its minorities, it was because, since the collapse of the Soviet Union, there no longer existed a central source of financing. However, the protection of the various national bodies of Armenia was at present the subject of a draft law.

17. The agreement on questions relating to the restoration of the rights of deported persons, national minorities and peoples, referred to in paragraph 74 of the report, required explanation. It was intended to replace the legislation enacted in the Soviet Union during perestroika, aimed at facilitating the return of such groups and peoples to their native lands - Georgia, Armenia, Chechnya, Crimea and so forth - and in that connection he cited the case of the leader of an Armenian humanitarian organization who had been stripped of his Soviet citizenship in 1989 and deported to Ethiopia and who, thanks to that legislation, had been able to go back to Armenia, recover all his rights and even stand as a candidate for the presidency.

18. The term "national minorities" itself had not appeared very precise to the Committee, with good reason. During the Soviet era, the passport of every Soviet citizen mentioned his citizenship, which was Soviet, as well as his nationality of origin. That was why the term was generally understood as referring to the population of an ethnic group different from one's own. As Mr. Garvalov had rightly remarked, the next report should clearly specify the meaning of words that were still being used with their former connotation.

19. Supplementing the information that had been provided on national minorities, he said that State officials were obliged by law to help those who requested assistance in defending their rights and interests, and to inform them of the obligations by which they were bound and what the consequences would be if they failed to respect them.

20. Generally speaking, the principle of non-discrimination had to be respected in all aspects of life, and it was being increasingly incorporated into the texts enacted or about to be enacted, which were thus gradually fleshing out the principles proclaimed in articles 15 and 43 of the Constitution. That had already been done with the Labour Code, the Penal Code, the draft code of penal procedure, the Civil Code and the Medical Assistance Code. That would be apparent to the Committee once it saw the text of the three draft laws which the High Commissioner for Human Rights had just received on the courts, the Prosecutor's Office and the enforced execution of court decisions, drafts on which members would be invited to comment. They would see that even if, as was apparent from paragraphs 29 and 30 of the report, international instruments were not automatically incorporated into the Armenian legal system, it was possible to refer to them, and they were taken into account, with the help of the advisory services of the High Commissioner for Human Rights, in the draft legislation. Furthermore, so that that legislation would not remain a dead letter, seminars were being organized for judges and police and prison authorities with a view to bringing about a gradual change in their attitudes. Human rights would become a discipline to be studied, but that would of course take several years. In reply to a question on the new Penal Code, he said that it did not contain any provisions penalizing racially motivated crimes because the legislature did not wish to effect a sort of segregation that would put persons belonging to minorities into a separate category. If the Committee insisted, such a provision could perhaps be added to the Penal Code, but he was not in favour of the idea.

21. The issue of dual nationality did not seem very clear to the members of the Committee, nor was it clear to the Armenians themselves. In fact, an ethnic Armenian was considered in Armenia to be anyone who had at least one Armenian parent. Anyone meeting that requirement could obtain citizenship through a simplified procedure. The ultimate aim was to have all Diaspora Armenians end up with an Armenian passport. Some bilateral agreements had already been signed to that effect.

22. No NGO had alleged any violation whatsoever of the rights of any minority, whether Azerbaijani or other. All citizens participated on an equal footing in the nation's political life, in referendums as in elections; their freedom of movement, and that of foreigners, was unlimited, except in the case of persons being prosecuted; everyone had the right to buy land and to contribute to the capital of privatized enterprises although quite naturally a

national preference had been established, giving priority to Armenians. In that regard, it was also understandable that only Armenians had the right to belong to a political party. As for the right to education, it had not yet been strengthened by being provided free of charge, as the State was unable to finance 100 per cent of the cost of education and had therefore to turn to private schools to some extent, but that would not always be the case. As a finishing touch, the creation of a human rights commission was under consideration.

23. Armenia was still an embryonic State. The Committee would be kept informed of all laws being drafted and could be assured that its comments would be heeded.

24. Mr. YUTZIS said he hoped that, when it submitted its next periodic report, or even before, Armenia would provide specific figures and statistical data that would enable Committee members to see to what extent, compared to the majority population, members of minorities could exercise the rights set out in article 5 of the Convention, and to what extent they were literate, had access to education up to the higher level and to health care programmes.

25. Paragraphs 127, 132 and 134 also called for clarification. Paragraph 127 gave a list of 13 officially registered religious faiths, but left out Islam. Given the importance of the relationship between national culture and spirituality in Armenia, that was cause for concern, especially since Muslims were not mentioned among the communities operating without being registered. Paragraphs 132 and 134 reported on the registration practice, which conferred juridical personality on the registered organization, thereby providing it with certain privileges. That information led to the question as to the status of the Muslim faith and what the disadvantages might be for a religious group that was not registered.

26. Mr. SHAHNAZARIAN (Armenia) said he too was surprised that the Muslim community was not mentioned in paragraph 127 of the report. Apparently that was simply an oversight and the Government would clarify the matter in its next report. There were mosques in Armenia and, generally speaking, the population was very tolerant of various religions, and religious communities, once they had been registered and acquired the status of a juridical person, could inter alia open schools.

27. Mr. SHAHI, referring to article 69 of the Penal Code (para. 81), which provided that propaganda or agitation intended to incite to racial or national enmity or dissension was punishable by six months' to three years' imprisonment or two to five years' exile, asked where the places of exile were.

28. Mr. DIACONU, noting that the representative of Armenia had mentioned in his replies certain allegations made against his country in the letter from the Republic of Azerbaijan, as well as situations which existed or had existed in Azerbaijan or Upper Karabagh, emphasized that those references should be disregarded by the Committee in the context of its consideration of the report of Armenia. The discussion should not set a precedent for the Committee's future activities.

29. Mr. SHAHNAZARIAN (Armenia), replying to Mr. Shahi, said that the provisions of article 69 of the Penal Code on exile no longer applied. They went back to the Soviet era and had inadvertently been reproduced verbatim by the authors of the report. A new Penal Code was being enacted.

30. Mr. VALENCIA RODRIGUEZ (Country Rapporteur) thanked the representative of Armenia for having presented a detailed, exhaustive report that was in conformity with the Committee's guidelines. He also thanked him for his replies and was gratified by the fruitful dialogue between the Committee and the delegation. Armenia was going through a difficult time and he hoped it would overcome its problems and continue along the path to democracy.

31. He welcomed the commitments the Government had assumed under the Convention, particularly with regard to the principle of equal treatment before the law for Armenians and others. Other initiatives should be taken, particularly in implementation of articles 4, 5 and 6.

32. Armenia's legal structures were being established. The Committee encouraged Armenia to pursue its efforts in that regard in order to give effect to the provisions of the Convention, particularly through the Penal Code, the Labour Code, the Marriage and Family Code and the provisions on the settlement of collective labour disputes. He also asked the Government to keep him apprised of all cases of racial discrimination brought before the courts. The Committee noted that the international instruments to which Armenia was a party could be invoked before the courts and had been incorporated into domestic law.

33. However, the Committee would appreciate more information in the next periodic report on the rights to which foreigners were not entitled and on the possible consequences of privatization.

34. Measures should be taken to protect the rights of ethnic Armenians who returned to their country, particularly in the fields of employment, health and work.

35. The Committee commended the steps that had been taken under article 7 and recommended that the Government should intensify measures aimed at promoting tolerance and respect for the Charter of the United Nations and the Convention. He suggested that the Government should make the declaration under article 14, recognizing the Committee's competence to receive complaints from individuals and approve the amendment to article 8 of the Convention. He hoped that the next report would provide additional information on the proposed national human rights commission.

36. Mr. NAZARIAN (Armenia), Permanent Representative to the United Nations Office at Geneva, paid tribute to the efforts made by the members of the Committee, the Country Rapporteur and the Chairman of the Committee, and assured them that their questions and recommendations would be brought to the attention of the competent bodies. Armenia intended to do everything possible to implement the provisions of all human rights instruments and the Convention in particular, guided by the Committee's observations.

37. The CHAIRMAN said the Committee had thereby concluded its consideration of the second periodic report of Armenia.

38. The delegation of Armenia withdrew.

PREVENTION OF RACIAL DISCRIMINATION, INCLUDING EARLY WARNING MEASURES AND URGENT ACTION PROCEDURES (agenda item 6) (continued)

Consideration of the situation in Rwanda

39. Mr. BANTON (Country Rapporteur for Rwanda) said that in 1996, the Committee had adopted a statement (A/51/18, p. 9) in which it emphasized the importance of the United Nations Assistance Mission for Rwanda and expressed concern over delays in bringing accused persons to justice and over continuing incitement to ethnic hatred. The Committee had recommended the convening of a constitutional conference and offered its cooperation in that event.

40. In 1997, the Committee had welcomed the attendance of a State delegation from Rwanda at its session and the information it furnished. The State representative had observed that the Rwandan people and Government were more concerned than any foreigner about national reconciliation, which could come about only if the country had the means to rebuild the social and economic foundations of society. In the two or three years since the forming of a Government of national unity, the international community had provided only minimal resources to enable it to translate its vision for a new Rwanda into reality (CERD/C/SR.1212, para. 28).

41. In the circumstances, the Committee should express its regret that the Government of Rwanda had not accepted its invitation to attend the present session. Events in Rwanda were still closely tied to those taking place in the Democratic Republic of the Congo. The Committee should keep Rwanda on the list of States for consideration under the prevention procedure, as it had done at the present session. Since the Committee needed additional information and Rwanda had not sent a delegation to the session, he suggested that the situation in Rwanda should be considered at the Committee's fifty-fourth session in March 1999.

42. Mr. de GOUTTES said he agreed with Mr. Banton's proposals, and particularly that the Committee should keep the situation in Rwanda under consideration under agenda item 6. However, the Committee's fifty-fourth session seemed somewhat far away. The Committee should recall the main points to which it had drawn the attention of the Government of Rwanda: first of all, the need to put an end to the impunity of those responsible for ethnic murders; to find a solution to the problem of the detention of many persons without trial in particularly harsh conditions; to give priority to the restructuring of the judiciary; to urge the Government to cooperate with the International Criminal Tribunal for Rwanda; and to insist on human rights training for law enforcement officers, who should be taught tolerance and inter-ethnic understanding.

43. Mr. SHAHI agreed with Mr. Banton that the situation in Rwanda should be kept under consideration under agenda item 6. Like Mr. de Gouttes, he felt that the Committee's fifty-fourth session would be too late.

44. The fifty-third session would be more appropriate, given the very real risk of another genocide in Rwanda. A rapid action force should be created for the prevention of tragic conflicts.

45. The Committee certainly needed information on the current situation in Rwanda before taking any decision.

46. Ms. McDOUGALL said that Rwanda had experienced the worst massive violations of human rights in recent times. It was a very poor country which was redoubling its efforts to achieve national reconstruction and reconciliation. The Committee should not wait until its fifty-fourth session before dealing with Rwanda; additional information should be requested on the current situation and it should be considered at the next session.

47. Justice must be done in Rwanda and must be seen to be done according to fair and impartial procedures. It was also important to combat impunity. The prison population exceeded 100,000, almost all of whom were Hutus; the trials that had begun were extremely slow; and resources were lacking to remedy the situation. The Committee should ask the High Commissioner for Human Rights to make greater efforts to assist Rwanda, both in the field and through its advisory services. It should also ask Rwanda to cooperate more with the International Criminal Tribunal. Furthermore, it should call on Rwanda to forgo executions of persons, most of them Hutus, who had been sentenced to death, as that would exacerbate ethnic tensions. She personally was opposed to the death penalty, which she considered to be a violation of human rights.

48. With regard to impunity, Rwanda should be supportive of the mission of the Secretary-General's investigative team currently in the Democratic Republic of the Congo. Moreover, the Committee should consider the measures that had been taken under article 7 of the Convention.

49. The media and the radio had played a central role in the genocide. What steps could be taken to use those media in a positive manner? Could they not be used to enhance the understanding of the importance of the concept of responsibility, and to publicize the proceedings under way before the International Criminal Tribunal?

50. She was following closely the extremely serious events that were beginning to occur in the north-west of Rwanda. The Government should be called upon to take measures to reduce tensions, put an end to the massacres and develop institutions of governance that would include all ethnic groups.

51. Mr. DIACONU said the approach suggested by Mr. de Gouttes was excellent, as long as the various points he had enumerated were placed in the context of the implementation of the Convention. The Committee should not step outside its field of competence. The two aspects stressed by Ms. McDougall were also very important: the launching of another genocide in the region should be avoided at all costs, and a return to normal encouraged by helping to restore institutions.

52. He had no problem with the Committee reconsidering the situation in Rwanda at its August 1998 session but, as Mr. Banton had said, it needed

up-to-date information to do so. The Committee could obtain such information in two ways: it could either address the Government directly, or ask the secretariat to transmit to it any pertinent information.

53. The CHAIRMAN said the Committee's secretariat could be asked to make the necessary arrangements with the United Nations Secretariat.

54. Mr. YUTZIS said the Committee's attitude towards the situation in Rwanda was very important and merited reflection by all members present.

55. Other United Nations bodies had perhaps not gone far enough in their analysis of that notorious example of inter-ethnic conflict and were not necessarily in a position to provide the Committee with all the information it needed on the subject.

56. As Ms. McDougall had rightly said, the fact that those responsible for the genocide remained unpunished was of capital importance, as the crimes that had been committed remained engraved on the collective conscience and fanned the flame of inter-ethnic hatred. However, it was certainly difficult to administer justice in a very poor country where there was little or no State and whose institutions had been dismantled. A parallel could be drawn with the situation in Haiti.

57. The members of the Committee should therefore realize that Rwanda was in an extremely vulnerable state and that it was pointless to recommend that the Government should take such and such a measure if it lacked the resources to do so.

58. In order to restore the situation to normal, it would be necessary to begin by repairing the social fabric, which would not be an easy task.

59. Instead of simply formulating purely rhetorical recommendations, the Committee should perhaps consider whether it could play a more active role on the country's behalf.

60. Mr. GARVALOV said he agreed in general with the views expressed by previous speakers and expressed the hope that the question of Rwanda would remain on the Committee's agenda under item 6 (early warning measures and urgent action procedures). He did not see why the Committee, which was one of the organs responsible for the protection of human rights within the United Nations system, could not in due course receive specific information on Rwanda. When he had been Chairman of the Committee in 1995, he had himself raised the question during consultations with the Secretary-General, who had assured him of his support in that connection. During her visit to the Committee at its previous meeting, the High Commissioner for Human Rights had done the same.

61. Ms. McDOUGALL said she agreed with Mr. Yutzis. Not only should the Committee do its best to obtain more information on recent developments in Rwanda, but it should also consider the possibilities within its field of competence of playing a more active role on the country's behalf. It would be useful to reflect on that point. The Committee should not limit itself to berating the Government of Rwanda but should help it to improve matters.

62. Mrs. SADIQ ALI said she too thought action was needed before the situation got out of control, as had happened in the past. She therefore favoured including the question in the agenda of the fifty-third session.

63. It was common knowledge that many countries sold or shipped arms to regions where ethnic conflicts were raging. In such cases, the international community should impose an arms embargo and the question should be placed on the Committee's agenda.

64. Mr. NOBEL said that in the case of Rwanda, knives, machetes and bows and arrows had probably played as important a role in the massacres as other types of weapons, although arms were unfortunately being exported to the country. He fully supported Ms. McDougall's observations: the Committee should try to obtain more recent information on developments and consider whether it could play a more active role in solving the problem. In that regard he would defer to the views of the more experienced members of the Committee.

65. The CHAIRMAN said the only United Nations body empowered to impose an arms embargo was the Security Council.

66. Mr. BANTON (Country Rapporteur) said he had no objection to Rwanda being placed on the agenda of the Committee's next session in August 1998. However, the Committee had been considering the question regularly since 1989, without achieving obviously any remarkable results.

67. He wished to dispel a misunderstanding: in reality, the Committee had no problem in obtaining all available information on the question within the United Nations system, but the fact was that much of that information was old and often not very useful.

68. The real problem was Rwanda's poverty, which made everything difficult. When a delegation from Rwanda had come before the Committee in March 1997, the representatives of the Rwandan Government had explained that the main obstacle in their path was the lack of material resources and means. The Committee should not adopt an attitude of superiority towards them nor put itself in their place in seeking practical solutions. As Country Rapporteur, he would try to draft a statement acceptable to all members of the Committee. Perhaps, in the light of what had been said, it was the tone of that statement that should be reflected on.

69. Mr. YUTZIS said that Mr. Banton was probably right to ask the Committee to show some modesty and realism. But did that mean it also had to confine itself to issuing statements? He himself had experienced unbearable situations during his mission to Croatia and could affirm that, from the standpoint of the populations concerned, who were facing serious problems in their daily life, statements were not of much help.

70. Mr. SHAHI said the Committee should take the right decision on the question. In order to do so, it should above all obtain recent information on how the situation was evolving, in order to evaluate its urgency. In that regard it could consult the Office of the High Commissioner for Human Rights, which could help it to determine whether another genocide was imminent. In

the light of that information, it could then decide what to do. If it turned out that the situation was becoming urgent, it could, for example, draw the attention of the Security Council to the matter.

71. The CHAIRMAN said a meeting had already been planned between the Committee's Bureau and the High Commissioner for Human Rights. The subject could be taken up at that time.

72. If members so desired, the question would be included in the agenda of the next session.

73. For the time being, a draft statement could be prepared by the Country Rapporteur, possibly with the help of members who had made suggestions. He proposed that the Committee should revert the matter at a future meeting once the text was ready and consultations with the High Commissioner for Human Rights had taken place.

74. It was so decided.

The meeting rose at 1.05 p.m.